IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY NINETH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 17400 of 2004

Between:

B.Kiran Shri, S/o B. John, Aged about 56 years,
C/o Gnayaiah, H.No.23/839, Rameshreddy Nagar, Nellore, Nellore District

..... PETITIONER

AND

1 The Deputy Register of Co-op Societies, R.R.Street, Nellore-1

2 The Manager, District Government Text Book Sales Office, Near RTC Bus Stand, Nellore, Nellore District

3 The Nellore Aided Schools Employees & Teachers Co-operative Credit Society Ltd., represented by its Person-in-charge, H.No.23/838, Rameshreddy Nagar, Nellore-3

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate Writ, Order or direction more particularly one in the nature of "Writ of Mandamus" to declare the proceedings issued by the 1st respondent vide C.E.P.No.1324/2004-05, dated 07-09-2004 as illegal, arbitrary, without sanction or authority of law and ultra virus and consequently to set aside the impugned orders passed by the 1st respondent.

Counsel for the Petitioner: MR.C.H.SATISH KUMAR

Counsel for the Respondent Nos. 1 &2: GP FOR COOPERATION

The Court at the admission stage made the following:

ORDER:

This writ petition is filed questioning the impugned proceedings of the first respondent dated 07-09-2004, whereunder the petitioner was called upon to furnish security for a sum of Rs.4,26,055/-, failing which the schedule mentioned immoveable properties will be conditionally attached under Section 73 of the A.P. Cooperative Societies Act, 1964 (hereinafter referred to as 'the Act').

The petitioner states that he was the president of third respondent-Society having been elected on 07-04-1996 by the General Body. The tenure of the Managing Committee was for a period of five years. The petitioner submitted a representation to the Joint Registrar on 01-03-2001 stating that since it is not possible to conduct the elections by 06-04-2001, a person in charge be appointed. While so, the petitioner was served with a notice dated 24-04-2002 by the first respondent calling upon him to pay the cost of the books supplied on credit basis. Again letters dated 13-03-2003 and 19-09-2003 were issued claiming a sum of Rs.3,50,597/- allegedly due towards the cost of the said books. The petitioner gave a reply denying his liability and stating that in the month of January, 2003 a person-in-charge was already appointed. In spite of the same, the 1st respondent issued another letter dated 19-11-2003 calling upon the petitioner for

settlement of dues to the tune of RS.4,26,055/- by 30-11-2003. The petitioner diverted the said letter to the person-in-charge for necessary action. While so, the impugned proceedings dated 07-09-2004 have been issued intimating the proposed order of attachment in the event of default of furnishing security for a sum of Rs.4,26,055/- pending reference under Section 61 of the Act.

The contention of the petitioner is that the order of the first respondent which is silent as to the nature of the proceedings initiated as well as the nature of the claim is arbitrary and untenable in law. It is also contended that even if any amounts are due from the third respondent-Society, the said Society being a society with limited liability as defined under Section 2(q) of the Act, the petitioner cannot be made liable for the same.

I have heard the learned counsel for the petitioner and the learned Government Pleader appearing for the respondents.

At the outset, it is to be noted that against the impugned order, which is passed under Section 73 of the Act, an alternative remedy of appeal is available under Section 76 of the Act. Without exhausting the alternative remedy available under the Statute, the petitioner cannot maintain this writ petition. Though the learned counsel for the petitioner contended that the availability of the alternative remedy is not a bar for invoking the jurisdiction of this Court since the very initiation of the proceedings under Section 73 of the Act are contrary to Section 74 of the Act, the learned Government Pleader for respondents refuted the said contention and submits that Section 74 of the Act which deals with only recovery of the amounts due to the Government, does not attract to the case on hand.

Learned counsel for the petitioner while placing reliance upon a decision of this Court in ***J. Satyanarayana Vs. The Collector of Excise, Nalgonda***, further contended that the attachment of the properties of the members of the Society for recovery of the dues without enquiry is not valid.

It is always open to the petitioner to raise the said plea while working out the appropriate remedy as available under the statute.

This is not a case where the impugned proceedings are vitiated by inherent lack of jurisdiction. Even assuming that the proceedings suffer from any material irregularity in exercise of jurisdiction or in violation of the statutory provisions, it is open to the petitioner to contest the same by filing an appropriate counter before the first respondent. That apart, as already expressed above, an alternative remedy of appeal is also available under the Statute. The writ petition is accordingly disposed of granting leave and liberty to the petitioner to work out appropriate remedy as available under the statute. No costs.

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(G. ROHINI, J)

Date: 29-09-2004

ghn

To

1 The Deputy Register of Co-op Societies, R.R.Street, Nellore-1

2 The Manager, District Government Text Book Sales Office, Near R.T.C. Bus Stand, Nellore, Nellore District.

3 The Person-in-charge, the Nellore Aided Schools Employees & Teachers Co-operative Credit Society Limited, H.No.23/838, Rameshreddy Nagar, Nellore.

4 Two CCs to the Government Pleader for Cooperation, High Court of A.P., Hyderabad.

5 Two CD copies.